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Policy Paper



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# American Primary Reform

LETTING THE PARTIES DECIDE WHO REPRESENTS THEM

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## **ABOUT THE NEW CENTER**

American politics is broken, with the far left and far right making it increasingly impossible to govern. This will not change until a viable center emerges that can create an agenda that appeals to the vast majority of the American people. This is the mission of The New Center, which aims to establish the intellectual basis for a viable political center in today's America.

## **THE NEW CENTER**

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# Executive Summary

## NEW CENTER SOLUTION:

# Letting the Parties Decide Who Represents Them

*\*This is part one of a three-part series on fixing America's dysfunctional primary election system.*

America's democracy is dysfunctional, and our primary election system is a major contributor to the problem. Across every level of government and nearly every U.S. state, primary rules punish small parties and independents, contribute to low voter turnout, and enable the election of unqualified or extreme candidates. Presidential primaries stand up against these issues and more, with the Democratic National Committee in particular struggling to balance party and popular control in 2020.

In an age of intensifying political antipathy, primaries could be the most urgent of electoral issues. With more and more areas of the country reliably Democratic or Republican, primary elections were the only races that mattered in 40% of state House and Assembly races in 2016, with 4,700 seats up for election but 998 Democrats and 963 Republicans running without contest from the opposing party.<sup>1</sup>

**Primaries will also be the only races that matter for 78% of seats in the U.S. House of Representatives in the 2020 elections, with The Cook Political report pegging 343 of 435 seats as safe for one party.<sup>2</sup>**

With such a powerful impact, primaries amplify the voices of the few who turn out. In the 2016 presidential primaries, only 57.6 million people in a country of 200 million registered voters went to the voting booths, effectively making the choice for everyone to nominate Hillary Clinton and Donald Trump—the two most unpopular presidential candidates in recent U.S. history.<sup>3</sup>





Reforming American primaries will be difficult. It will require significant efforts on behalf of parties, state governments, and the American people alike, and will demand counterintuitive solutions. Reducing political polarization, for example, might require party vetting that lends more control of the primary process to leaders in the Democratic and Republican Parties.

Despite these challenges, now is the time to act.

And while there’s no silver bullet, The New Center suggests three avenues for reform that are likely to make our elections more representative and responsive to the needs of voters:





# Letting the Parties Decide Who Represents Them

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# Party Brands, Control, and Vetting

**In 1968, a countercultural political group called the Yippies nominated a 200-pound pig for president.**

Or at least, they tried; Chicago police officers quickly arrested the handlers of Pigasus, the swine in question, and refused to grant him the Secret Service personnel and national security briefing demanded by his supporters.<sup>4</sup>

The foiled nomination came just a few days before the Convention that would forever transform the Democratic Party. Already, the national mood had taken a turn for the worse. The Convention took place in Chicago in 1968 against the backdrop of the massively unpopular Vietnam War, the power vacuum left by incumbent president Lyndon B. Johnson's shocking exit from the race, and the gut-wrenching assassinations of Martin Luther King Jr. and Robert F. Kennedy.

As the convention proceeded, anti-Vietnam-War riots rocked Chicago, and Mayor Richard Daley summoned a massive police presence to crack down on them. When the Democratic Party finally picked the highly unpopular pro-war Vice President Humphrey, who hadn't won a single primary, protesters swarmed outside the convention shouting "the whole world is watching" as they were billy-clubbed by police. But perhaps nothing quite captures the chaotic national mood like the Yippies' proud presentation of Pigasus before a rapt crowd in downtown Chicago. The people were frustrated that the establishment's closeted nomination process was shutting them out.

They wanted more direct democratic control over the presidential primaries, and after Humphrey's landslide loss to Nixon, they got it. The Democrats granted the people near-full control over the presidential primaries by binding popularly chosen delegates to their districts' votes, but soon suffered major losses to Republicans in the coming years, prompting them to add in establishment "superdelegates" unbound by popular opinion.

In 2020 the Democratic Party will swing the pendulum back again. Reacting to Bernie Sanders supporters' claims that Democrats rigged the 2016 Convention in favor of Hillary Clinton, the DNC will switch to an unprecedented total popular control by removing superdelegates from the first ballot—a move hailed as a progressive step.<sup>5</sup>

## **But this step hits a tripwire.**

We often assume that the answer to problems with American democracy is more direct democracy, and that the more control by the people directly, the better. But today, our primary elections arguably suffer from too much direct democracy, with free-for-all elections that allow a long queue of people incapable of winning the presidential nomination to crowd out those who can.





## WHAT ARE SUPERDELEGATES?

Superdelegates make up about 15% of the Democratic delegates who vote on the Democratic presidential nominee at the Democratic National Convention. Unlike regular delegates, who are bound by their districts' or states' popular votes, superdelegates can vote for whomever they like. Superdelegates consist of Democratic party leaders like former presidents, congresspeople, and fundraisers.<sup>6</sup>

Over time, Americans have increasingly viewed the Democratic and Republican Parties, with memories of their “smoke-filled rooms,” as entirely too exclusive—and up until 1972, they were. But the effort to decrease the influence of party leaders in deciding which candidates represent the party is having major unintended consequences.

**American political parties are not government agencies. They're private, curated brands, and they've carried their slowly evolving identities with them for well over a century in some cases.**

Just as a business logo might connote company culture, party labels represent specific goals, ideas, norms, and political bents. A logo fails to be effective when anyone can change the color, switch the font, or flip the image whenever they like. Just the same, parties will fail if they can't command even their own political identities. The very foundation of the party system requires individuals to compete to run under Democrat and Republican flags—not the reverse.

Parties mean something for a reason; if they don't, a single person can hijack, conquer, and reinvent an entire party image with far too much ease. Like any other private brand, parties should be able to carefully manage their identities—and if voters no longer resonate with them, these Americans should launch their own political parties, movements, and groups. (For strategies to make this easier, see The New Center's *Clearing the Path for New Parties*.)

Counter to our current political zeitgeist, America would likely benefit from more, not less, power to the parties. American political parties should be powerful, not porous.

**They should curate their own brands and identities, have the power to boot out voices inconsistent with these brands, and still be able to produce qualified and attractive contenders.**

Although parties are private groups that exist separately from government, their role in candidate selection means they wield enormous influence over our political process. They should leverage it carefully, function like gatekeepers, and help preserve America as a vibrant representative democracy rather than a direct one.

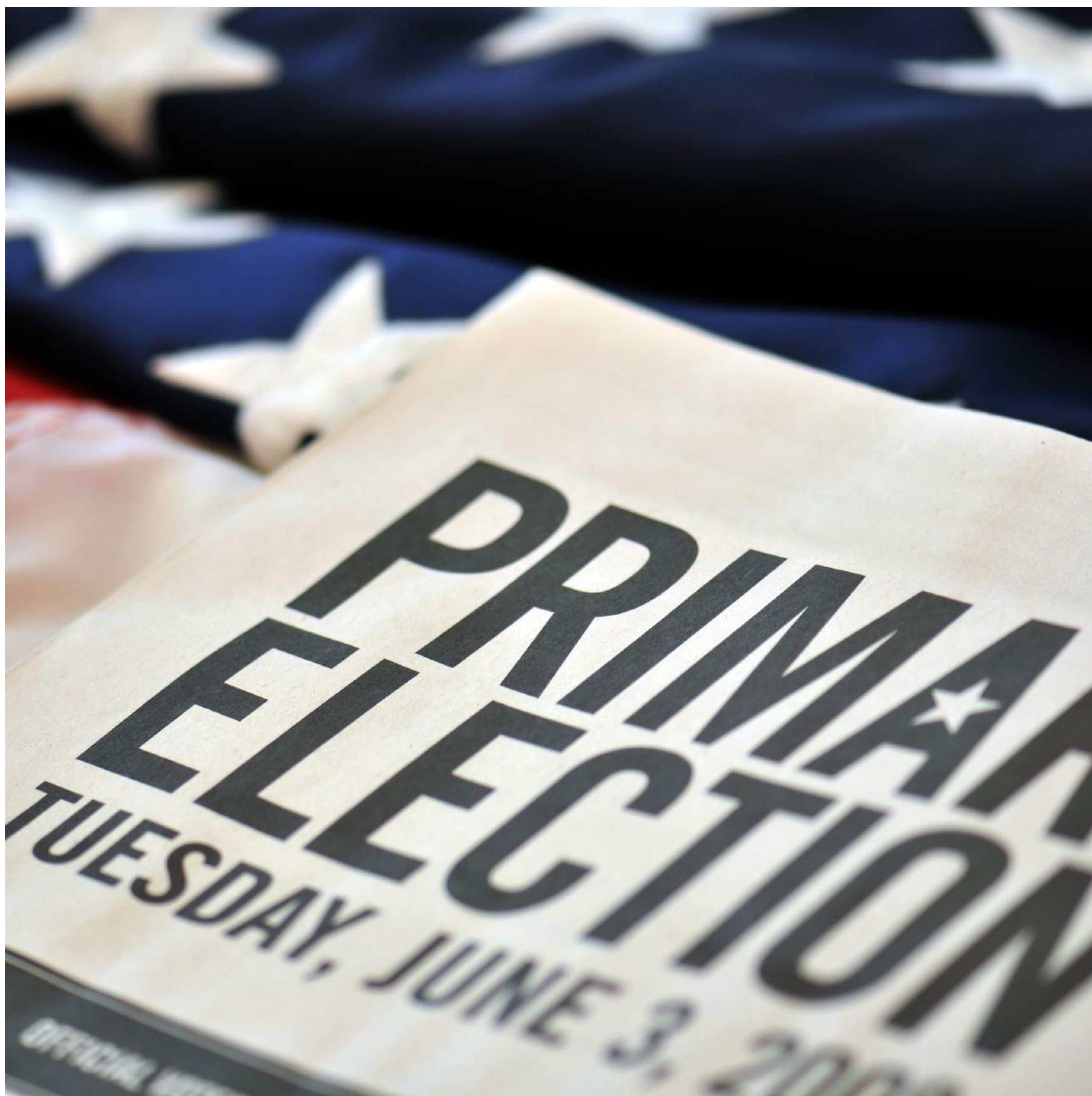




TIMELINE

- **1910:** Oregon becomes the first state to establish a popular primary system to pick pledged delegates to appear at the national convention.<sup>7</sup>
- **1968:** 17 states had adopted Democratic presidential primaries, but most were "beauty contests" that didn't bind delegates to the popular vote. The state and national leadership of the Democratic party still fully controlled the nominee.<sup>8</sup>
- **1972:** 23 states had adopted Democratic presidential primaries, but had continued to matter very little.<sup>9</sup> This year, however, the Democratic Party adopted the McGovern-Fraser reforms, which gave near-full popular control to the results of the primaries, caucuses, and party-run state conventions.
- **1982:** After suffering major losses to Republicans, the Democratic Party adds in superdelegates, which consist of elected state and federal party officials, state and local party chairs, and other major stakeholders (like union leaders).
- **2020:** The Democratic Party takes superdelegates out of the first ballot. The new rules state that in order to win the nomination, the Democratic candidate must win a majority of all pledged delegates, not including superdelegates. If no candidate wins a majority, only then will the contest go to a second ballot, where superdelegates can vote.





# Why Should We Empower Parties?

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# Today, Populism Reigns. The Founding Fathers Would Be Worried

As grassroots, populist ideals have swept American politics, the parties and the people have forgotten the importance of filtering—a concept valued deeply by the founding fathers, who keenly appreciated the flaws of rule by majority alone.

As they drafted the Constitution, America's founding fathers worked painstakingly to balance focused federal control against state-based rule and popular sentiment. In his Federalist No. 10, one of dozens of articles penned to persuade the states on the Constitution, James Madison came out vehemently in favor of a powerful republic.<sup>10</sup> Madison railed against direct democracy, writing that “no man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment.”<sup>11</sup> Unlike regular citizens, elected representatives would theoretically lack self-interest, neutrally arbitrating citizen disputes.

The paragon example was taxes. According to Madison, “there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice.” Of all issues, taxation would most seriously corrupt a direct democracy, allowing the majority to force the minority to foot the bureaucratic bill. Representatives, on the other hand, would be “enlightened statesmen” impartial to either side, protecting “private rights,” not wallets.

**Madison's analysis, of course, had bias. Protecting minority rights at this time also meant protecting slavery, a key effect of the Constitution's Electoral College.<sup>14</sup> James Madison himself owned slaves, and Paul Jennings—one of them—lived alongside him in the White House.<sup>15</sup>**

Thomas Jefferson, Madison's peer, agreed with his sentiment. In a quote often attributed to Jefferson, he opines that “democracy is nothing more than mob rule, where 51% of the people may take away the rights of the other 49%.”<sup>12</sup>

A purely direct democratic system would punish political and demographic minorities, whose fate would be decided by the whims of their numbers.





But Thomas Jefferson also understood the dangers of completely removing power from the people. Instead of either extreme, he advocated for a middle ground. As Jefferson phrased it, "I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but inform their discretion."<sup>15</sup> Elected officials could serve in this capacity; chosen by the people themselves, and informed in their respective duties, they could arbitrate on behalf of their constituents.

## REFERENDUMS RUN AMOK: PROP 30 AND PROP 13



The idea that majorities punish minorities in direct democratic systems is well-tested in California, whose constitution allows citizens to propose and vote on laws and amendments. (It was the tenth state constitution to do so.<sup>16</sup>) Established in 1911, this facet of the California Constitution has spawned a great experiment in popular control—and has increasingly inspired like-minded systems in other states, too.<sup>17</sup>

In 2012, it also fulfilled Madison's prophecy. By a margin of 55.4% to 44.6%, the ballot-voting majority voted to tax the minority. Prop 30 hiked the income taxes of Californians earning \$250,000+ by more than 29%, setting a record for the highest state income tax in the nation.<sup>18</sup> According to Charles Varner, Associate Director of the Stanford Center on Poverty and Inequality, the result was "the largest state tax change that we have seen in the U.S. for the last three decades."<sup>19</sup>

The move came more than 30 years after Prop 13, a 1978 California referendum that shackled property taxes.<sup>20</sup> While the 2012 tax hike delighted the left and the 1978 tax freeze pleased the right, neither reform carefully weighed the effects on state budgeting, and both removed these decisions from the very people best equipped to make them: elected officials.

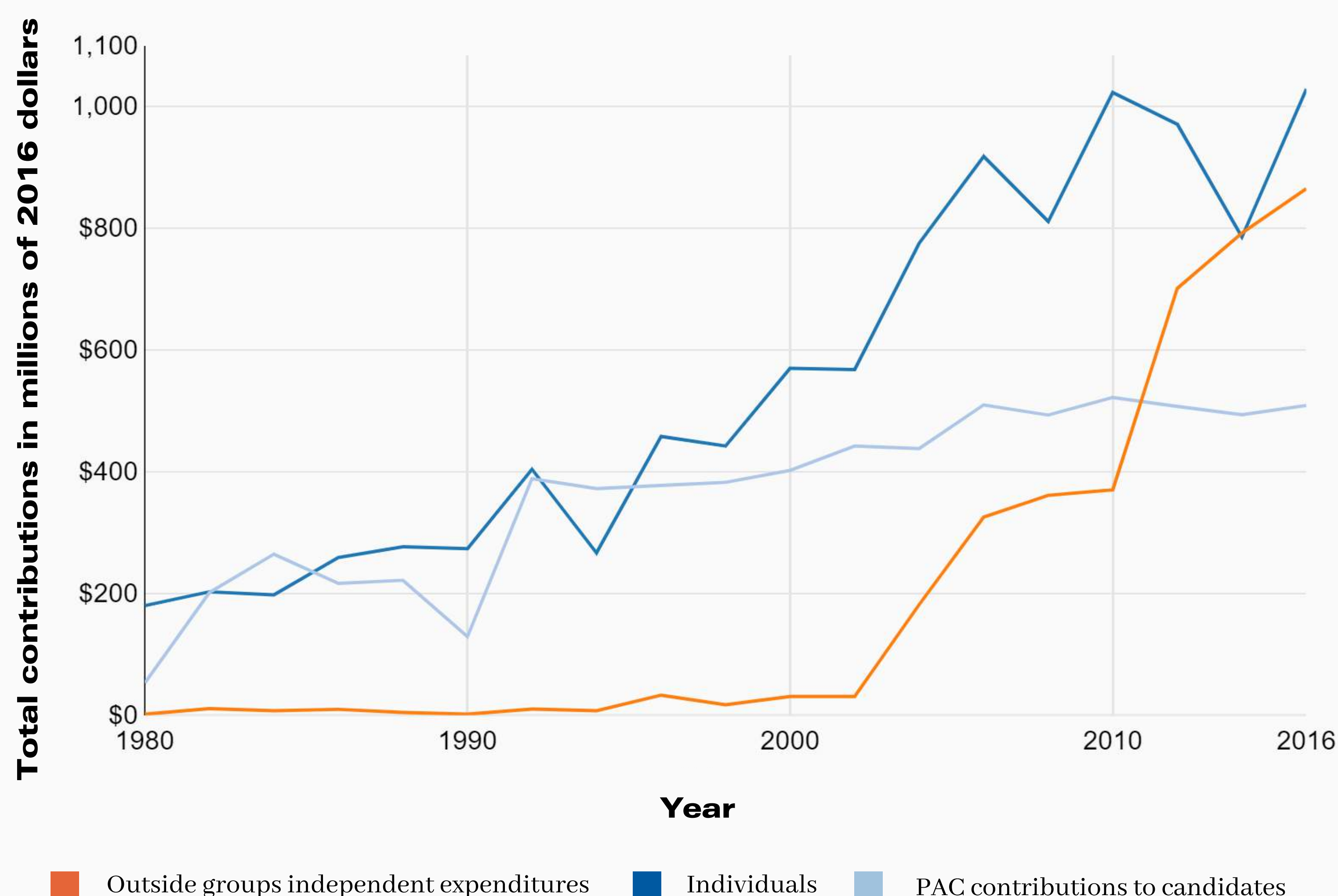


# Not All Established Interests Are Evil

The United States was never meant to be a direct democracy. Americans elect representatives who serve their interests and fulfill campaign promises, with accountability through elections that happen every two, four, or six years. These representatives exist in the political machinery of America's two-party system. And while flawed, this complex social machinery has managed intricate political processes very effectively over time—from campaigning to exchanging information to brokering delicate compromises.

In his 2015 article, Senior Fellow Jonathan Rauch at Brookings argues that a coalition of libertarians, populists, and progressives have steadily beaten down America's established political machinery over time. Upon first glance, many of the consequent reforms might seem positive. Anti-establishment efforts included slashing the influence of money in politics, forcing transparency on congressional negotiations, and banning pork barrel spending. But these reforms brought other consequences.

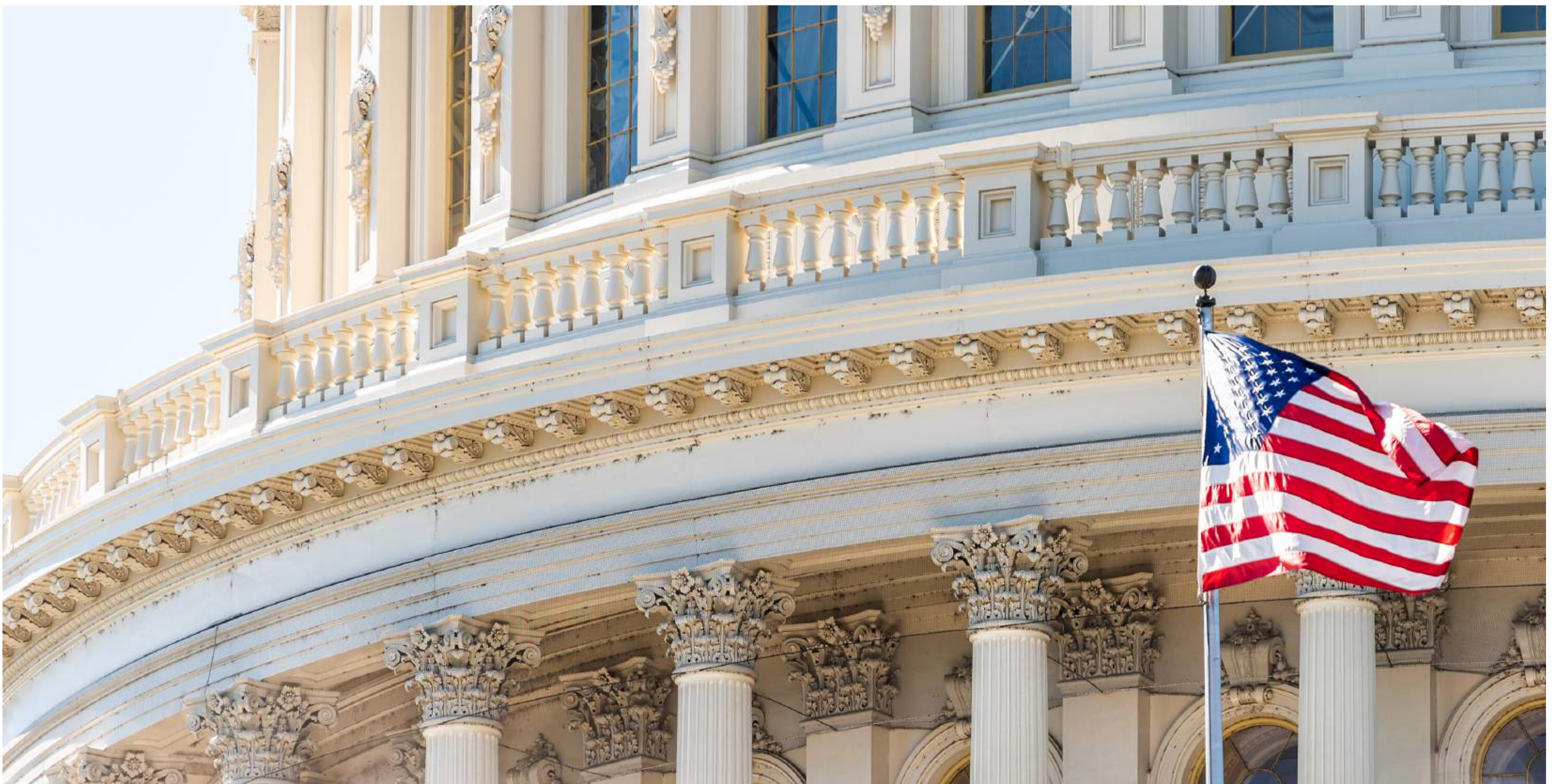
Today, congressional deals are more difficult because privacy can't be guaranteed. Funding that used to feed the two established political parties now fuels rival, unconstrained groups with ambiguous agendas. And limits on the trade of perks and pork have made deal-making harder among the parties at one of the most intensely polarized moments in their histories.<sup>21</sup>



**Outsider group contributions have massively outpaced those of PACs since 2012, owing to court decisions like Citizens United (2010) that allow outside groups to spend unlimited amounts independent of parties and candidates.**

Source: The Brookings Institution and Federal Election Commission





The political machinery, of course, is far from perfect and widespread public mistrust of elected officials makes them more open to appeals to blow up the system. But the system has worked even if the process behind progress is messier and more transactional than we'd like.

**Legislation as seminal as Lyndon B. Johnson's 1964 Civil Rights Act, for example, came through with the help of a targeted spending item or "earmark"; Johnson promised a NASA research facility to the district of Indiana House Republican Leader Charles Halleck for his support.<sup>24</sup>**

## PORK BARREL SPENDING

"Earmarks" or "pork barrel spending," often used derogatively, refer to targeted spending items tacked onto federal bills.

By trading a favorable vote for one of these line-items, congresspeople can funnel small amounts of federal funds into popular local projects like museums and bridges, scoring points with their constituents.

Republicans informally banned pork in the House in 2011, but it's still perfectly kosher in the Senate.<sup>25</sup>



# Are Primaries Really Democratic?

In 2016, a schism hit the Democratic Party, with Sanders supporters taking aim at a nominating system perceived to shut out voters.

“The general public may not necessarily get involved in the insider details of the DNC, but most voters know about this superdelegate debacle,” said former Ohio Senator Nina Turner, a Sanders supporter, to Newsweek.<sup>25</sup>

“I’m a superdelegate and I don’t believe in superdelegates,” declared Massachusetts Senator Elizabeth Warren.<sup>26</sup>

Nixing superdelegates on the first ballot would “fulfill our mandate without disenfranchising the people who have built the Democratic Party,” said DNC Chairman Tom Perez, commenting on the rule change for 2020.<sup>27</sup>

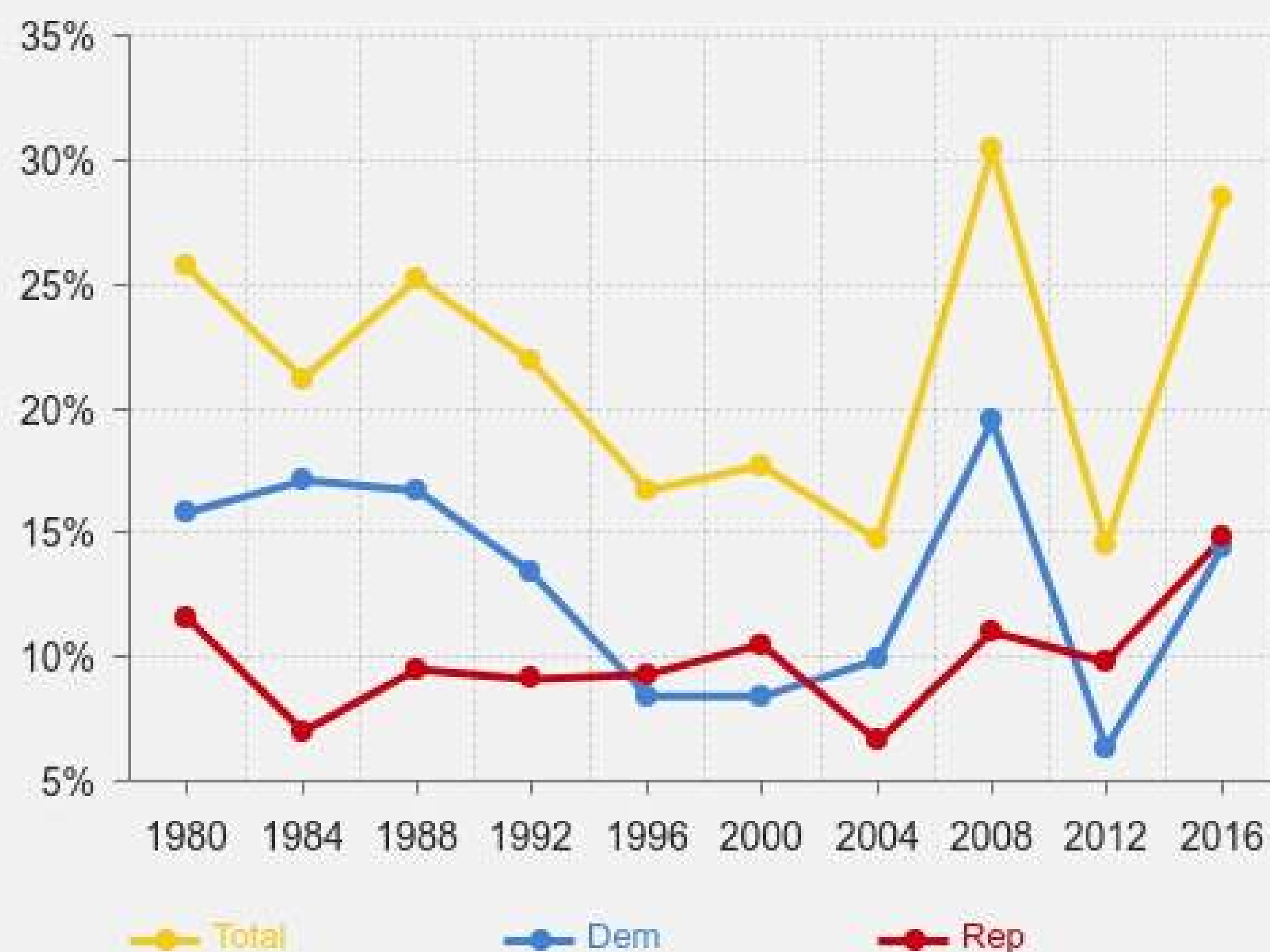
**The Democratic consensus has landed: superdelegates “disenfranchise” regular voters, unfairly swaying nominations that should be decided by the people and the people alone—not by DNC senators, congresspeople, lobbyists, and party officials.**

But the popular primaries are far from directly democratic. How can they be, when people don’t vote in them?

In 2016, only 28.5% of eligible American voters showed up to primary voting booths.<sup>28</sup> In the last 40 years, primary turnout peaked in 2008 at 30.4%, or not even a third of eligible voters. And in other years, it stagnated around 20%, dipping to 14.5% in 2012. Popular primaries in which only one seventh to one third of eligible voters ever turns out are hardly popular primaries at all—they’re venues for the passionate and time-wealthy, and it makes little sense to let demographically distinct slivers decide entire parties’ brands.<sup>29</sup>

## After a long decline, primary turnout rebounds

*Votes cast in Democratic and Republican primaries as a share of eligible voters in primary states*



Note: Total turnout does not equal the sum of turnout in Democratic and Republican primaries because some states only held primaries for one or the other party. Data from U.S. territories not included. 2016 figures exclude D.C. Democratic party, to be held June 14. Eligible voters are defined as U.S. citizens ages 18 and older.

Source: Pew Research Center analysis of 1980-2012 November and January 2016 Current Population Survey data for the share of eligible voters. 1980-2004 and 2013 voting data from "America Votes" (CQ Press); 2008 Data from "Vital Statistics on American Politics, 2011-2012" (CQ Press). 2016 data are from state election offices, when available, or as reported by The New York Times.



# The Problem with Purely Popular Primaries

As the two parties have swung their primaries full-throttle toward popular control, they've committed themselves to demolishing candidate barriers to entry—and in the process, forgotten the numerous drawbacks of letting almost anyone run under their party banner.

The rules meant to open the nominations to the people—both voting-wise and running-wise—have backfired. Small-donor requirements make campaigning more expensive, and easy-access debate stages only help contenders with no real intentions of winning to compete.

Perhaps most importantly, easy access to the debate stage means candidates with no serious intentions can hack a free PR-generator for epic personal gain. There's a reason why little-known individuals run for president when they're confident they will lose: it pays. Whether politically, reputationally, or career-wise, simply running for president can result in massive personal benefits. Reverend Al Sharpton, an activist who sought the Democratic nomination in 2004, for example, marveled at how it affected his life trajectory. "No one in New York, when I was a tracksuit-wearing local activist, would ever dream I would sit down with a Republican president or host 'Saturday Night Live,'" he remarked.

The Democratic presidential contenders are no different. While author Marianne Williamson and entrepreneur Andrew Yang face low polling numbers and unfavorable odds of winning, for example, both stand to gain significantly in their professions by staying in the race (and spotlight) as long as possible. As queried by a longtime Republican strategist, "what better way to self-promote than to run for president?"<sup>31</sup>

**None of this makes sense. Parties should be the ultimate bosses of their own events, proceedings, and brands, and they should feel empowered to boot out voices they admonish.**

As political analyst Bill Scher notes in RealClearPolitics, "neither party has any civic obligation to make it easier for people who shouldn't be president to run for that office under their party's banner."<sup>32</sup> Letting people do so will only muddy the very nominating mission. Of the 2020 Democratic debates, Scher declares that **"the party has an interest in fostering a process that helps produce candidates most likely to win. Instead, it has built a process that makes it easier for candidates who cannot win to crowd out those who can."**<sup>33</sup>





# Who Has the Power to Change Primaries?



In order to change the primaries, one must first understand who, exactly, controls them: the parties, the people, the states, and the judiciary. The states and the parties share the bulk of this control, with the states directing external logistics and the parties directing internal ones. States decide who can vote (felons, for example, often can't), set voting rules like ID requirements, reimburse counties for expenses, and pick primary dates.<sup>35</sup> (Rules surrounding payment by states versus counties vary.<sup>34</sup>) Parties, on the other hand, control rules surrounding who can qualify for their debates, who can serve in their conventions as superdelegates, and the influence of superdelegates versus popularly-chosen delegates on the final pick.

**This power-sharing between parties and states is recent, and coincides with the rapid vanishing of caucuses over time. When caucuses dominated the candidate selection process, parties controlled and paid for them entirely. But as popular presidential primaries booted them out, parties transferred this power to the states.**

While the parties and the states own most of the control, the judicial branch can also weigh in. In 1923, for example, Texas passed a law preventing black Americans from voting in the state's Democratic primary. The Supreme Court struck it down as a 14th Amendment violation, but when the Texas Democratic Party responded by writing the same law, the Court upheld the rights of private groups (in this case, Texas Democrats) to run themselves how they wished. Two decades later, the Court rescinded its decision. In *Smith v. Allwright*, it cut back on the power of parties in primaries, finding that by virtue of their state-sanctioned status, primaries must hew to the Fourteenth and Fifteenth Amendments.<sup>36</sup>



## What about GOP Superdelegates?

Although some people still use the term “superdelegates” to describe RNC delegates who can vote however they like, these delegates are described as “unbound.” Unlike superdelegates on the Democratic side, unbound GOP delegates are much fewer in number. Both the Democrats and the Republicans award delegates relatively equally across districts, but have different bonus systems. While Republicans give away more delegates to districts with party loyalty, Democrats award more delegates based on population. The more Democrats in the district, the more delegates it receives.<sup>46</sup> On the Democratic side, a candidate must receive at least 15% of the vote in the district or state to receive any delegates at all, while Republican states usually require 20%.<sup>47</sup>

## HOW THE DNC AND RNC DELEGATE SYSTEMS WORK

### DNC

#### Add-on Delegates

The DNC multiplies the total base delegates for a state by 15% to calculate its number of add-on delegates, who are party leaders and elected officials within the state.<sup>41</sup>

#### Superdelegates

Superdelegates are members of the Democratic National Committee who are not popularly elected to their superdelegate positions and who are unpledged, which means they can vote how they like. In 2016, most of them were simply DNC members while others were U.S. senators, governors, congresspeople, and distinguished party leaders like presidents and vice presidents.<sup>42</sup> In 2020, only 16% of the Democrats’ 4,745 delegates will be superdelegates.<sup>43</sup>

### DNC and RNC

#### Pledged District Delegates

Each state receives three delegates per congressional district. Some of these delegates vote based on district results while others vote “at-large” following state results. This varies state by state.<sup>37</sup> (See “pledged at-large districts.”)

#### Pledged District Delegates

Delegate counts vary by population of Democrats. Depending on the state, some delegates vote by the results of their district while others vote at-large.<sup>38</sup>

#### Pledged at-large Delegates

Each state receives three delegates per congressional district and five delegates per senator. These delegates vote based on statewide results, although some district-based delegates vote by district.<sup>39</sup>

#### Pledged at-large Delegates

Delegate counts vary by population of Democrats. Depending on the state, some delegates vote by the results of the state overall, not their districts.<sup>40</sup>

### RNC

#### Bonus Delegates

The GOP awards extra delegates to states that voted for the Republican presidential nominee in a previous election, have a Republican governor or Republican senators, or have Republican-dominated state legislatures.<sup>44</sup>

#### Unbound Delegates

Each state will receive three automatic delegates, who are state party officials, that can vote however they like. Unbound delegates will make up about four percent of GOP’s 2,551 delegates in 2020.<sup>45</sup>





# The Solutions: How to Empower Parties

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# The Solutions

So how do we strike a balance between exclusively popular primaries, which are encouraging unqualified candidates to compete for the most important position in American politics, and the interests of political parties? Elaine Kamarck, a Senior Fellow at Brookings, has some ideas. Kamarck proposes three options in her 2018 article, “Returning Peer Review”:<sup>48</sup>

- Democrats could retain the use of unbound superdelegates, and Republicans could adopt them in greater number—with both parties allowing superdelegates to vote on the first ballot for president at their party conventions.
- Both parties could adopt nominating conventions analogous to Massachusetts’s Democratic convention for statewide offices, which casts votes for candidates and officially endorses the person with the highest tally. The endorsed candidate appears first on the popular ballot, which identifies them as “officially endorsed.” Candidates who don’t receive at least 15% of the convention vote can’t appear on the final popular ballot at all, which screens out newcomers and people who are unpalatable to party officials. Scaling it to a national level, however, would pose a challenge; Kamarck points out that allowing time for a convention screen-out vote would stretch the presidential election even more, since delegates would need to be chosen a full year before the popular primaries.
- The parties could hold “pre-primary votes of confidence” in which superdelegates trade their votes for one-on-one interviews with the candidates. After evaluating them, superdelegates would cast “pre-primary votes” for all the candidates they find qualified, with candidates who fail to receive at least 15% of these votes booted out of the televised debates—but still able to compete on the ballot.

**There is, however, a problem here. Filtering and gatekeeping are both critical, but how can the superdelegates function like representative democracies when more than half of them have never been elected?**

There were 713 superdelegates at the Democratic National Convention in 2016, but only between 36 and 39% of them were governors, congresspeople, senators, or former presidents or vice presidents.<sup>49</sup> If the Democratic Party is to revive the superdelegates without peeving its anti-superdelegate camp, it should consider limiting superdelegate status to only those who are serving, or have served previously, in elected offices.

**To make up for the gap in votes, the DNC could either recruit more elected officials or amplify the votes of current superdelegates by 61 to 64%. A system like this would more closely honor the idea of representative democracy—and in theory, expel the private interests embodied by superdelegate lobbyists.**<sup>50</sup>

The RNC should build the same process within its own system, which currently lacks much party vetting. Of its 2,551 delegates estimated to vote in 2020, only 110 will be unbound.<sup>51</sup>





# Summary

It is time to change the national conversation on primaries, particularly at the presidential level. The current primary system has lost sight of the importance of the parties themselves in the nomination process, and it's time to bring it back. The answer to the question of saving American democracy might be to have a less directly democratic, more representative democratic leadership in our political parties.



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